

Submission to Hotel Quarantine Inquiry
Hon. Michael O'Brien MP, Leader of the Opposition

1. On 31 July 2020, I, Hon. Michael O'Brien MP, Leader of the Opposition, applied to the Board to appear at the Inquiry pursuant to section 62(2) of the *Inquiries Act 2014*. Those submissions stated that:

The Leader of the Opposition seeks to assist this Inquiry with a reasoned perspective, external to government and to work with the Board of Inquiry to achieve the 25 September reporting deadline.

2. On 5 August 2020, further submissions in support stated:

The Board has been appointed by the Premier and sits within the Executive function of the State. The nature and manner of the Inquiry necessarily involves examination and questions being asked by the State Executive by the Board who similarly is appointed by the government and exercises executive power.

3. As with all proceedings, there is a well-founded assumption that where witnesses have a self-interest to avoid culpability that the weight of their evidence is to be discounted. It was in that context that the need for an independent participant was noted.
4. On 12 August 2020, the Board refused the application. Order 2 provided that, after the close of the evidence, written submissions may be provided to the Board.
5. Following the hearing of evidence, the major conclusion to be drawn is that witnesses evaded questions, gave self-serving evidence, sought to shift culpability at every level, from the Premier, to his ministers and the secretaries of departments. It is in this that the hearings were most revealing.
6. Given the significant remaining gaps in the evidence, the most appropriate recommendation for reform that ought to be made is there must be a process to inquire into the facts that surrounded this most egregious government failure. A process that is not confined solely to the hotel quarantine program, but that encompasses the breadth of failures, including contact tracing, failures that sees Melburnians still in stage 4 lock down while most of Australia is now operating in a COVID normal environment.
7. Notwithstanding, several general observations can be made, as noted, largely premised upon the gaps in the evidence, what was not said, and the intentional obfuscation of many of the witnesses.
8. The evidence led before the Inquiry points to the obvious conclusion that the Hotel Quarantine (HQ) Program was the most serious failure of public policy and administration in Victorian, and probably Australian, history.

9. The devastation caused by this failure is captured by the distress of the families of the over 750 people who have died. Many family members were unable to be at the bedside of their loved ones to say final goodbyes.
10. The catastrophe was caused by failure at many levels of the State Government.
11. The fact that the HQ program was established at short notice does not excuse the failures. Those failures inexplicably persisted into late June 2020 and arguably persist to this day, given the State Government's announcement last week of a "re-set" of HQ arrangements. There are fresh allegations that the "hot hotels" currently in use for hotel quarantine may be repeating previously identified failures and the Board has undertaken to make further enquiries regarding these as part of its final report.

Ministerial Accountability

12. The failure of the Premier and the members of the Crisis Council of Cabinet is clear. There was no request for detailed briefings about how this major undertaking was being implemented. Key Ministers gave evidence that they only became aware of crucial information such as infection control, the use of private security, PPE practices and cleaning arrangements two months after the program's commencement at the end of May 2020 when an infection outbreak occurred at the Rydges Hotel.
13. During this two-month period the evidence has proved that many concerns were identified by senior officials in briefings, through representations to Members of Parliament and in the media.
14. The purpose of the HQ program was to control the virus and prevent infection. Instead it became a breeding ground for the spread of infection throughout the community. The risks to the control and prevention of infection were readily apparent to anyone with a serious interest in the matter.
15. Much attention has been given to the decision to use private security guards. That we still do not know who made this decision demonstrates the contempt that the Government has for the Victorian community. The evasion and blame shifting displayed by senior officials, Ministers and the Premier ought to be condemned. The Premier referred to private security guards being part of the HQ program in a media conference on 27 March 2020, the day on which National Cabinet agreed to establish HQ. The Premier's evidence that he did not have knowledge that private security would be used is not credible nor believable. It appears that the protection of professional reputations took precedence over the interests of the community. The Premier's inability to explain to the Inquiry why he specifically referred to the use of private security guards in his press conference on 27 March 2020 should be seen as an attempt to obfuscate his knowledge of, and involvement in, the decision to use private security guards in the HQ program.

16. Evidence has demonstrated that numerous offers of ADF support were made from the earliest days of the HQ Program and remained throughout the entire period of its operation. The offer to deploy the ADF to Victoria and other states was made in the National Cabinet meeting on the morning of 27 March 2020 as part of the decision to establish a hotel quarantine system. The decision noted that “These (HQ) requirements will be... enforced by state and territory governments, with the support of the Australian Defence Force (ADF)...”. That offer of ADF support was referred to in the Premier’s media release and press conference of the same day. The Premier’s evidence that he did not have knowledge of the ADF offer is not credible nor believable, nor is the Premier’s evidence that he understood that any ADF offer of assistance was limited to logistics, when the National Cabinet decision specifically referred to support for enforcement.
17. Counsel Assisting in closing submissions, when addressing the substantial failings of departmental Secretaries, referred to the Westminster system of democratic government. Counsel claimed that the refusal of the Secretaries to adequately brief Ministers undermined the system. This submission omits a fundamental principle of the Westminster system – that is that Ministers are accountable for the failures of their departments and agencies and that Ministers have a positive obligation to ensure that matters of significance that fall within their responsibility are being satisfactorily managed. Deliberate ignorance does not mitigate this responsibility and serious failures must result in the resignation from the Cabinet of the relevant Minister. To do otherwise puts personal interest at the expense of one of the foundations of responsible government
18. It would be wholly inadequate for the Board to simply make findings of system failures as ultimately the relevant Ministers are responsible for such failures. The Inquiry’s report should make adverse findings against Premier Andrews, Minister Mikakos, Minister Pakula and Minister Neville as each of them – whether by act or omission – contributed to the human, economic and social disaster that the failed HQ program has caused for the people of Victoria.

Administrative Responsibility

19. The control and command structure established to manage the HQ Program failed comprehensively. The structure failed both at the hotel site and departmental oversight levels. Multiple commanders, controllers, supervisors, team leaders and authorised officers were appointed. Most approached their roles with the best intentions, but they were thwarted by excessively complex and confusing lines of authority. The result was that advice differed day to day and hotel to hotel.
20. The Inquiry highlighted the fact that key decision makers are still not in agreement about the respective responsibilities of lead and support agencies let alone who was in-charge. This resulted in efforts during the Inquiry by government agencies to blame each other. In separate correspondence to the Board, the Opposition recommended that the Premier and former Minister Mikakos be recalled to appear again, given the clear conflict of evidence that is now before the Board. This suggestion was rejected.

21. A prominent concern from the early days of the HQ Program was the lack of attention given to infection control. Some of the evidence shows that the balance at the hotels was inordinately focused upon detention and compliance. Insufficient weight was given to infection control and the welfare of returned travellers. These concerns were expressed by the Chief Health Officer and other senior medical personnel. The evidence that as part of the induction process for security guards, diversity training was prioritised over infection control training, demonstrates this lack of attention.
22. An indication of the confusion at the hotel level was the inadequacy of record keeping. The Inquiry heard of exercise books being used to facilitate shift handovers, databases not communicating to one another, returned traveller records being incomplete and dietary requirements not captured. It was described as a shambles and its impact was amplified by the continuous movement of staff such as Authorised Officers and Team Leaders across hotels.
23. These deficiencies in the HQ Program should not have escaped the attention of key decision makers such as Departmental Secretaries and their Deputies, let alone Ministers.
24. The engagement of private security guards, without proper professional oversight, is rightfully seen as a major failure of the HQ Program.
25. Failures happened at the very start. The personnel of the Department of Jobs, Precincts and Regions (DJPR) tasked with engaging private security firms were unfamiliar with the security industry and contract management. Unified Security was chosen as a principal contractor, even though it was not on the preferred contractor list and employed only 89 staff in Victoria. The DJPR officer in charge of this function believed the security firms would not subcontract the work.
26. The appointment of security firms was subject to the approval of the Victorian Trades Hall Council. Evidence confirmed that this approval was sought and given. It is an oversight that officials of the Council were not called to give evidence. Similarly, there were good reasons to call for evidence from the United Workers Union, the union with industrial coverage of security guards. It is possible that the Council and/or the union influenced the decision to use private security guards.
27. The Inquiry received evidence of numerous examples of failures by security guards to discharge their duties properly and to observe infection control and PPE requirements. The allocation of responsibility for the proper training and instruction of guards to the security firms was an error. This was the responsibility of the Department of Health and Human Services (DHHS). DHHS disputed its responsibility by suggesting that DJPR and the firms were responsible.
28. The Inquiry heard evidence that concerns with the establishment of the HQ program were raised from its inception, including evidence of emails from DJPR staff to DHHS and EMV staff advising of the need for a permanent Victoria Police presence at the hotels. Despite these warning bells being sounded from Day 1, no remedial action was taken.

29. The question of who was in charge is still not settled. Practices and advice were inconsistent and contradictory. The feedback of information to offsite authorities was disorganised. The lines of authority for conveying advice to the hotel level staff often proved ineffective. The dysfunction of the structure is proven by evidence that staff responsible for developing advice were not responsible for ensuring the advice was communicated to hotel level leaders.
30. The responsibility for this array of failures in implementing the HQ Program rests with senior officials such as the Secretaries of DHHS and DJPR and their senior officers. DHHS was the lead emergency response control agency and was in charge. Its leaders are particularly culpable of failing in their duties. In addition, the failure of the Secretaries to keep their Ministers and the Crisis Council of Cabinet informed of the challenges and failures involved a derogation of duty. The ability of DHHS, with its myriad of diverse functions and \$20 billion budget, to focus on a public health crisis, has been highlighted.
31. Despite hundreds of hours of oral evidence, thousands of pages of submissions and intense public interest, many central facts remain unresolved; this includes exactly who made the decision to engage private security, and who did former Chief Commissioner of Police, Graham Ashton, communicate with between 1:16pm on 27 March and 1:22pm the same day, that led him to understand that private security would be used at the hotels. This “missing six minutes” is key to understanding who made the decision to engage private security guards in preference to Victoria Police or the ADF in the HQ program. It is essential that the Inquiry determine what happened in those six minutes that subsequently led to the devastation that has been wrought on the Victorian community. For Victorians who have suffered so much loss of life, so much COVID-19 infection and other loss, it would be wholly unsatisfactory if key questions such as these remain unresolved.

Hon. Michael O’Brien MP
Leader of the Opposition
5 October 2020